

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civ. File No. 06-CV-0362
MJD/RLE

STEPHEN CLAYPATCH and BRUCE YOUNG, as Trustees of the IBEW Local No. 292 Health Care Plan; STEPHEN CLAYPATCH and BRUCE YOUNG, as Trustees of the Electrical Workers Local No. 292 Pension Fund; STEPHEN CLAYPATCH and BRUCE YOUNG, as Trustees of the Electrical Workers Local No. 292 Annuity & 401(k) Fund; STEPHEN CLAYPATCH and BRUCE YOUNG, as Trustees of the Electrical Workers Local No. 292 Vacation & Holiday Fund; STEPHEN CLAYPATCH and BRUCE YOUNG, as Trustees of the Minneapolis Electrical Industry Board/JATC/LMCC; and each of their successors,

Plaintiffs,

vs.

POLYPHASE ELECTRIC COMPANY,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR ENTRY OF DEFAULT**

This matter was heard before the undersigned on the 5th day of May, 2006.

FINDINGS OF FACT

1. Plaintiffs filed a Summons and Complaint in this matter on January 26, 2006. Defendant was served with the Summons and Complaint in this matter on January 30, 2006.
2. Defendant has failed to file and serve a response or Answer to the Summons and Complaint.
3. Plaintiffs are trustees and fiduciaries of the above-referenced funds (the "Funds"). The Funds are multi-employer plans as defined by 29 U.S.C. ' 1002(37). They

are established to provide, *inter-alia*, pension, health and welfare vacation benefits and training to employees doing electrical work in the construction trades, and are maintained for the benefit of workers pursuant to a Collective Bargaining Agreement. All contributions must be made and all reports must be submitted to 5100 Gamble Drive, Suite 430, St. Louis Park, MN 55416, as the administrative agent designated by the Trustees.

4. Defendant is bound to the terms of a Collective Bargaining Agreement (a/k/a Inside Construction and Maintenance Agreement) between the Minneapolis Chapter, National Electrical Contractors Association, and the International Brotherhood of Electrical Workers, Local Union Number 292, A.F.L.-C.I.O.

5. The Collective Bargaining Agreement requires employers to make contributions on behalf the bargaining unit employees in the amounts set forth and agreed upon therein. The employer is required to contribute every month, not later than the 15th day of the following month, all hours worked by the employees to the Funds' designated administrator. All contributions must be made and all reports must be submitted to the receiving agency designated by the Trustees.

6. The Collective Bargaining Agreement provides that payroll reports that are not postmarked on or before the 15th day of the following month are deemed to be delinquent. Liquidated damages in the amount of 1% of the total amount received or \$200.00, whichever is greater, are due for those payments received after the 20th day of the month and through the last working day of the month. Liquidated damages in the amount of 5% of the total amount received or \$1,000.00, whichever is greater are due for payments received after the last working day of the month.

7. Defendant failed to submit the fringe fund reports and contributions for the

months of December, 2005, January, 2006, February, 2006, and March, 2006, and therefore breached its obligation under the Collective Bargaining Agreement.

8. Plaintiffs reasonably believe that Defendant employed individuals during these months. Furthermore, Defendant is obligated to remit the reports, indicating, if appropriate, that no hours were worked.

CONCLUSIONS OF LAW

1. Defendant is in default, and Plaintiffs are entitled to Entry of Default.

2. Defendant is obligated to pay to the Funds all fringe benefit contributions, liquidated damages, and attorney fees and costs incurred in collecting the delinquency.

3. Defendant is required to submit the December, 2005, January, 2006, February, 2006, and March, 2006 fringe fund reports and payment for the contributions due per those reports.

ORDER

IT IS ORDERED:

1. That Plaintiffs' Motion for Entry of Default [Doc. No. 3] is granted.

2. That Defendant must file the reports for the months of December, 2005, January, 2006, February, 2006, and March, 2006, if they have not already been submitted, at the offices of 5100 Gamble Drive, Suite 430, St. Louis Park, MN 55416, correctly identifying hours worked pursuant to the Collective Bargaining Agreement within ten days of service of this Order upon them.

3. That Defendant must pay to the Plaintiffs the fringe benefit contributions of all of the hours reported pursuant to the Court's Order, plus liquidated damages in the amount of 5% of the delinquent contributions, or \$1000 per month, whichever is greater, for the months of December, 2005, January, 2006, February, 2006, and March, 2006.

4. That upon the filing of the outstanding reports for the months of December, 2005, January, 2006, February, 2006, and March, 2006 by Defendant with Plaintiffs pursuant to this Order, if Defendant fails to make payments required by this Order, the Plaintiffs may move the Court for entry of a money judgment in the amount of unpaid contributions, liquidated damages, and reasonable attorney fees and costs, as shown by Affidavit filed with the Court.

Dated: May 16, 2006

BY THE COURT:

s / Michael J. Davis
The Honorable Michael J. Davis
United States District Court